

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 44/Lab./AIL/J/2014, dated 12th March 2014)

NOTIFICATION

Whereas, an award in I.D. No. 39/2001, dated 31-1-2014 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Sri Bharathi Mills, Puducherry and Thiru R. Dhanasekaran represented by Puduvai Mill Thozhilalar Sangam, Puducherry over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,

Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Tmt. S. MARY ANSELAM, M.A., M.L.,
Presiding Officer, Labour Court.

Friday, the 31st day of January 2014

I.D. No. 39/2001

President,
Puduvai Mill Thozhilalar Sangam,
Puducherry.

.. Petitioner

Versus

The General Manager,
Sri Bharathi Mills, Puducherry

.. Respondent

This industrial dispute coming on 24-1-2014 for final hearing before me in the presence of Thiru Durai Arumugam, Advocate for the petitioner, Thiru K. Ravikumar, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following :

AWARD

This industrial dispute has been referred as per the G.O. Rt. No. 143/2001/AIL/L, dated 26-7-2001 for adjudicating the following:-

(1) Whether the non-employment of Thiru R. Dhanasekaran by the management of M/s. Sri Bharathi Mills, Pondicherry is justified or not?

(2) To what relief the said workman is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The facts giving rise to this industrial dispute as stood exposted from the claim petition runs thus:

The worker Dhanasekaran was working in the Colour Ware House for 15 years in the respondent mill. Initially, the respondent mill as having about 1500 workers but subsequently it was reduced and it was taken over by National Textile Corporation and the workers strength came down to the level of 400. The officials of the respondent management exploited the situation and transferred the workers at their whims and fancies. Some workers were transferred to the jobs where there were light works. The worker Dhanasekaran was demanded a sum of ₹ 10,000 as bribe by the Personnel Officer Gajendiran for allowing Dhanasekaran to be in his original post itself. Leave was granted in favour of Dhanasekaran so as to enable him to arrange for bribe money. Dhanasekaran objected for illegal activities of the said officer. Thereupon, the said Dhanasekaran was prevented from entering into the mill premises by instructing the security staff. He also declared that for 18 consecutive days Dhanasekaran absented himself, to that effect notice was displayed on the board. Thereupon, the worker Dhanasekaran issued his advocate notice. On that, Dhanasekaran was permitted to enter into the respondent mill. The domestic enquiry was conducted against Dhanasekaran against the principles of natural justice and also against the standing officer turned out the worker Dhanasekaran from the enquiry without giving opportunity to participate in the enquiry. The enquiry officer also told the petitioner Dhanasekaran that the result of the enquiry would be against him.

3. Dhanasekaran was charge sheeted as though he abused his superior officer Palani and also he refused to perform work as directed by Palani. However, the statement of Palani was not recorded. The worker Dhanasekaran was also previously terminated from services and through court order he was reinstated in service. Accordingly, the petitioner prayed for reinstatement in service with back wages.

4. *Per contra*, traversing the averments the claim statement, the respondent filed the counter with the averments which run thus:

The worker Dhanasekaran joined the respondent mill on 12-7-1983 in the Finished Ware House Department. He was known for his riotous and unruly

behavior towards his co-workers. For his indiscipline behavior, he was suspended for 10 days also. He intimidated and threatened the General Manager of mill as the management took disciplinary action and terminated him from service. However, by the order of the Labour Court in I.D. No. 3/1991, he was reinstated in service with effect from 3-8-1994. Even thereafter he did not mend his ways. On 3-1-1997 he indulged in indiscipline activities and scolded the Personnel Officer, Labour Welfare Officer and Spinning Master in filthy languages. The respondent mill is a sick mill and at present there are only 420 workers. The strength of the workers in the Ware House Department and is 112 and he was working only in that department. The management owing to shortage of grey cloths for process decided to run only one shift in the said department instead of two shifts. Thereupon, 16 workers were found in the department as surplus and they were transferred to the Spinning Department in a phased manner according to seniority. At the first instance five workers were transferred and at the second instance 11 workers including Dhanasekaran was transferred. Those transferred employees at the Spinning Department were given wage protection and given training for 3 to 6 months without affecting their wages. Except Dhanasekaran all other workers joined Spinning Department and started getting training. The said Dhanasekaran instead of joining duty there at the Spinning Department agitated as against the transfer order. The petitioner along with some other persons started a trade union "Sri Bharathi Mills Thozhilalar Nala Urimai Padukappu Sangam" and in which he was the treasurer. Eventhough, Dhanasekaran was transferred with effect from 9-12-1997 to the Spinning Department he did not join duty. He applied for medical leave for some time and he was on E.S.I leave for some time so as to avoid joining duty in the Spinning Department. However, he finally joined the Spinning Department during the end of January 1997. He did not learn the work properly but he was roaming around the mill premises. On 3-2-1997 when the Supervisor of the department questions him about it he misbehaved with him and threatened him with dire consequences. Thereupon, Dhanasekaran was suspended with effect from 4-2-1997. Charges were framed as against him. The domestic enquiry was conducted by an advocate. Due opportunities were given for the worker to defend himself. The enquiry officer held the worker guilty of charges. After giving second show cause notice, dated 7-7-1998 and obtaining reply, dated 29-8-1998, he was terminated from service by the respondent's order, dated 14-9-1998. The allegations that Gajendiran, Personnel Officer demanded bribe etc. are all false.

5. The worker was continuously absentee unauthorisedly with effect from 1-1-1997 for which notice was sent on 23-1-1997 to his last known address by RPAD instructing him to join duty but he continuously absented from duty with effect from 1-1-1997 till 18-1-1997 and for that the copy of which was exhibited in the notice board. There is no necessity to stop Dhanasekaran at the entrance gate. The enquiry officer did not act against the principles of natural justice and he did not misbehave in any way or acted unbecoming of an enquiry officer as alleged in the claim statement. Accordingly, the respondent prayed for dismissal of the industrial dispute.

6. During enquiry on the petitioner's side, on consent Ex.P1 to P8 were marked and on the respondent side on the consent Ex.R1 to R12 were marked. No oral evidence was adduced on either side.

7. *The point for consideration is:*

Whether the industrial dispute can be allowed?

8. *On this point:*

After hearing both sides the Labour Court has passed an award, dated 6-3-2003 as against the award an Writ Petition No.19439 of 2003 was filed and the Hon'ble High Court of Madras has passed an order, dated 11-1-2013. The High Court has allowed the writ petition and the matter is remanded back to the Labour Court to apply section 11A of the Industrial Disputes Act to the facts of the case and to decide as to whether the punishment of dismissal from service imposed on the petitioner was justified and warranted in the facts and circumstances of the case. Such exercise shall be completed by the Labour Court, within a period of three months from the date of receipt of a copy of this order. So, I.D.(L) No. 39/2001 was again taken on file on 5-8-2013. Now, the only issue to be decided by the Labour Court is whether the Labour Court ought to have *suo moto* exercised jurisdiction under section 11-A and examined as to whether the punishment of dismissal was proportionate to the charge. According to the High Court Question IV relates to the power of the Labour Court under section 11A of the Act. When section has been incorporated a Labour Court functioning under the Act is bound to apply the amendments from time to time in respect of any plea raised pertaining to its jurisdiction and after the introduction of section 11A, the Labour Court has to exercise the jurisdiction enjoined upon it under the provisions of the Act and it is not for the workman to plead an incidental and consequential relief made available to him under the statute. In the present case, the Labour Court framed the question as to whether the domestic enquiry was in accordance with the principles of natural justice or not. The subsidiary question was if not in accordance with the principles

of natural justice, whether the petitioner is entitled for reinstatement with back wages. The Labour Court holding that there is no infirmity in the domestic enquiry and held that the petitioner is not entitled for reinstatement also. The Labour Court did not address the question as to whether the punishment was justified and whether the Labour Court should exercise or refuse to exercise its power under section 11-A of the Act. So, it was the duty cast upon the Labour Court to consider the question as to the proportionality of the punishment. This has not been done by the Labour Court in the impugned award. The High Court has raised six issues, except issue No.4 and then all the five issues have been decided against the petitioner.

9. So this court has framed an issue as follows:-

Whether the punishment imposed on the petitioner by the Labour Court is proportionate to the act done by him. Duty which was caused upon the Labour Court was to consider the question as to the proportionate of the punishment.

Section 11(A) of the industrial Disputes Act, 1947 states as follows:-

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment *in lieu of* discharge or dismissal as the circumstances of the case may require:

In any proceeding under this section the Labour Court, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

10. According to the petitioner he was working at the Colour Ware House in the mill and he was dismissed from service. During 1991 he was working in the Colour Ware House for 15 years. It is argued on the side of the petitioner that insubordination to the officer and abusing him in the meeting are the charges of the specific charges levelled against the petitioner. Both the charges are not severe to the extent of awarding punishment of dismissal from service. On the side of the petitioner the judgment passed by the Madras High Court in W.P.No.15233/1995, dated 19-12-2002 was pressed into the service. That case is also dismissal

from service of employee for using abuse language to the Superior. It is held that on facts, dismissal severe and it is proportionate and choice of reinstatement of fifty per cent back wages of *lump sum* compensation of little over four lakhs of rupees left to employer. In that case also the petitioner women employee worked in the mill for about 16 years, in that case also it is stated the Labour Court is expected to consider the same independently in order to assess as to whether the punishment was appropriate. In that case, the High Court come to the conclusion that the penalty of dismissal was not warranted. If the employee is reinstated in service, it is sure to cause embarrassment to his superiors and it may result in the other workers resorting to such misconduct. So, the awarding of compensation instead of ordering reinstatement is justified. Now, in the present case also the charge against the petitioner that he has abused the superior in the meeting and he is insubordination to the superior officer. It is clearly proved so, in the present case also the awarding of compensation instead of ordering reinstatement is justified. So, accepting the above decision this court came to the conclusion that the dismissal order imposed to the petitioner is highly excessive to the charges levelled against him. But, if he was reinstated, into service it will create some other problems. So, in the present case also the petitioner is entitled only for compensation.

11. The age of the petitioner is 56 as per the proof affidavit filed by him, he was dismissed from service on 17-9-1998 onwards. This court is inclined to hold that ends of justice would be met by directing the respondent to pay a sum of ₹ 5,40,000 as just compensation *in lieu of* the petitioner being directed to be reinstated in service. The conduct of the petitioner and the words occurred by him certainly disentitled the petitioner to be taken back for employment. Therefore the amount due cannot be calculated merely on the basis of the quantum of salary he would be receiving as on date, making deduction for the said reasons, it would be just and proper that the monthly salary of ₹ 3,000 per month and on that basis the amount due for 15 years have to be calculated. The past period has to be disentitled for the reason that he has not rendering any work to the respondent calculation on basis of ₹ 3,000 per month and for the period of 15 months. The petitioner would be entitled to ₹ 5,40,000.

12. In the result, this industrial dispute is partly allowed and the petitioner is not entitled for reinstatement with other benefits. However the petitioner is entitled to the monetary compensation of ₹ 5,40,000 (Rupees five lakhs and forty thousand only). No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 31st day of January 2014.

S. MARY ANSELAM,
Presiding Officer,
Labour Court, Puducherry.

List of petitioner's witness:

PW.1 — 2-9-2013 — R. Dhanasekaran

List of respondent's witness: Nil

List of petitioner's exhibits:

- Ex.P1 — Copies of the token relating to leave availed on four spells by the petitioner Dhanasekaran, dated 9-12-1996.
- Ex.P2 — Copy of the standing orders of the respondent mill, dated 10-2-2003.
- Ex.P3 — Copy of the representation given by the worker Dhanasekaran to the enquiry officer, dated 9-3-1998.
- Ex.P4 — Copy of the enquiry proceedings of the enquiry officer.
- Ex.P5 — Copy of the Official Gazette of Puducherry bearing No. 22, dated 31-5-1994.
- Ex.P6 — Copy of the gate entry details of the respondent mill on 4-1-1997 at 1st shift.
- Ex.P7 — Copy of the advocate's notice sent by the petitioner to the respondent, dated 25-1-1997.
- Ex.P8 — One other copy of Ex.A7 with acknowledgment card.

List of respondent's exhibits:

- Ex.R1 — Leave application of the worker Dhanasekaran to the respondent along with the medical certificate, dated 31-12-1996.
- Ex.R2 — Letter, dated 1-1-1997 of the petitioner to the respondent.
- Ex.R3 — Copy of the complaint, dated 3-1-1997 lodged with the Sub-Inspector of Police, Mudaliarpur Police Station by the respondent against the worker Dhanasekaran.
- Ex.R4 — Copy of the notice sent to the petitioner by the respondent calling upon him to join duty, dated 23-1-1997.
- Ex.R5 — Acknowledgment card signed by the petitioner Dhanasekaran, dated 27-1-1997.
- Ex.R6 — Copy of the show cause notice, dated 4-2-1997 issued by the respondent to the petitioner.

Ex.R7 — Copy of the reply given by the petitioner to the respondent, dated 8-2-1997.

Ex.R8 — Copy of the enquiry proceedings of the enquiry officer.

Ex.R9 — Copy of the enquiry report of the enquiry officer, dated 25-6-1998.

Ex.R10 — Copy of the dismissal order, dated 14-9-1998 by the respondent of the petitioner from the service.

Ex.R11 — Copy of second show cause notice to the petitioner by the respondent.

Ex.R12 — Copy of the enquiry report of the enquiry officer in Tamil version.

S. MARY ANSELAM,
Presiding Officer,
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY
FINANCE DEPARTMENT

(G.O. Ms. No. 64/F2/2014, dated 29th March 2014)

NOTIFICATION

Whereas, orders were issued to six Public Sector Banks for collection of tax, fees and other amounts pertaining to Commercial Taxes Department, Government of Puducherry through e-payment mode *vide* G.O. Ms. No. 28/F2/2011, dated 10-5-2011 of the Under Secretary to Government, Finance Department, Puducherry;

And whereas, the Ministry of Finance, Department of Revenue, State Taxes Division, Government of India, has requested the State Governments to rope in more number of banks to facilitate e-payment of Commercial Taxes *vide* their letter F.No.S.31012/2/2009-SO(ST), dated 14th September 2010;

Now, therefore, in exercise of the powers conferred by rule 67 of the Puducherry Value Added Tax Rules, 2007, the Lieutenant-Governor, Puducherry has been pleased to direct that the tax revenue, fees and any other amount required to be paid to the Commercial Taxes Department in the Union territory of Puducherry may also be paid by e-payment mode through the Bank of India, in addition to the banks already authorised. The other terms, conditions and procedures prescribed in the said Government order is applicable for e-payment mode through Bank of India also.

(By order of the Lieutenant-Governor)

CHANDRAKER BHARTI, I.A.S.,
Development Commissioner-*cum*-
Secretary to Government (Finance).